

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

AS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/287,673 04/07/99 FERENCZ

R PGI-40016

EXAMINER

IM52/0522

THOMAS R FITZSIMONS  
JUETTNER PYLE PIONTEK AND UNDERWOOD  
SUITE 850  
221 NORTH LASALLE STREET  
CHICAGO IL 60601

TORRES VELAZQUEZ, N

ART UNIT

PAPER NUMBER

1771

DATE MAILED:

05/22/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application No.

09/287,673

Applicant(s)

FERENCZ ET AL.

Examiner

Norca L. Torres-Velazquez

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 March 2001.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 6-45 is/are pending in the application.
- 4a) Of the above claim(s) 14-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-13 and 45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Applicant's arguments filed on March 8, 2001 have been fully considered but they are not persuasive.

- a. Note that attorney did not affirm the election that was made over the phone.
- b. Applicants have amended claims 1 and 13 to make it clear that the web consists essentially of substantially endless filaments in a continuous web. Further, Applicants stated that they are claiming only continuous filaments.

"Consisting essentially of" does not mean "consisting of"; "adjacent" has a broader meaning than "side by side."—Ex parte Appeldorn & Gilkeson (PO BdApp) 159 USPQ 791. "Substantially" is a broad term. - - In re Nehrenberg (CCPA) 126 USPQ 383.

The use of the above terms does not further limit the claims to overcome the SUSKIND et al. reference, since these do not preclude the inclusion of other fibers in the web.

- c. Applicants provided a comparison table to show the differences in elongation values between their invention and the SUSKIND et al. reference.

Examiner noticed that there some incorrect values from the SUSKIND et al reference inserted on the Applicant's table. For example, in examples 2 and 3, the values for the basis weight inserted in the table are in (g/yd<sup>2</sup>), not in (oz/yd<sup>2</sup>). In order to compare values between SUSKIND et al. and the present invention, Applicants would have to provide more comparative evidence since there is no description of the examples in the specification.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claim 11 recites the limitation "said web of substantially endless continuous filaments" in line 2. There is insufficient antecedent basis for this limitation in the claim.

4. Claims 1-4, 6-11 and 45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

✓ "Consisting essentially of" does not mean "consisting of"; "adjacent" has a broader meaning than "side by side."—Ex parte Appeldorn & Gilkeson (PO BdApp) 159 USPQ 791.

"Substantially" is a broad term. - - In re Nehrenberg (CCPA) 126 USPQ 383.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4, 6-13 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by SUSKIND et al. (US Patent 4,808,467).

SUSKIND et al. discloses a spunlaced fabric suitable for disposable medical applications that is produced by hydraulically entangling wood pulp and staple fibers with a continuous filament base web producing a nonapertured high strength fabric, and treating the fabric with a fluorocarbon water repellant. (Column 1, lines 12-17).

The reference teaches the use of polyethylene, polypropylene, polyester and nylon as polymers from which the continuous filaments are made. (Column 3, lines 7-11).

SUSKIND et al. further discloses that the high strength nonwoven fabric comprises a wet laid second fibrous web consisting essentially of 50 to 90 weight percent wood pulp and 10 to 50 weight percent staple length fibers intimately hydroentangled with one another and with the base web. (Refer to claim 1). The reference also discloses that the basis weight of the continuous filament base web is in the range of from about 0.15 to 0.8 ounce per square yard (5.1 to 27.1 g/m<sup>2</sup>). (Refer to claim 10).

In example I (Column 5), the fibers of the two webs are hydroentangled by subjecting them to the action of two rows of water jets operating at a manifold pressure of 200 psig, four rows at a manifold pressure of 600 psig, four at 1200 psig and four at 1800 psig.

It is noted that SUSKIND et al. is silent with respect to the claimed interengaged packed loops. However, it is reasonable to presume that the claimed interengaged packed loops are inherent to the invention of SUSKIND et al. Support for said presumption is found in the use of the same starting materials (i.e. continuous filament base web), like processes of making the articles (i.e., the reference uses hydroentangling pressures that read on Applicant's specification), and the production of similar end products (i.e., fabric for medical apparel, etc...). The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the presently claimed hydroentanglement in the form of interengaged packed loops would obviously have been provided as a result of the inventive high strength hydroentangled nonwoven fabric of the SUSKIND et al. reference. *Note In re Best*, 195 USPQ 433.

Application/Control Number: 09/287,673

Page 6

Art Unit: 1771

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

nlt

May 18, 2001

*Elizabeth M. Cole*  
ELIZABETH M. COLE  
PRIMARY EXAMINER

US 0928767304P1



Creation date: 27-06-2003  
Indexing Officer: FNIGATU - FITSUM NIGATU  
Team: OIPEBackFileIndexing  
Dossier: 09287673

Legal Date: 28-06-1999

No.	Doccode	Number of pages
1	IDS	2

Total number of pages: 2

Remarks:

Order of re-scan issued on .....